

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

LUCIANO TONELLI,

Plaintiff,

v.

SARGENT AUTRY, *et al.*,

Defendants.

CASE NO. C06-698-TSZ

ORDER

Having reviewed Defendants' Motion for Summary Judgment, docket no. 55, Plaintiff's Response, docket no. 59, the Report and Recommendation ("R&R") of the Honorable James P. Donohue, United States Magistrate Judge, docket no. 65, Defendants' Objections thereto, docket no. 66, and the balance of the record, the Court ORDERS:

(1) The Court ADOPTS IN PART and DENIES IN PART the R&R, docket no. 65, as outlined herein.

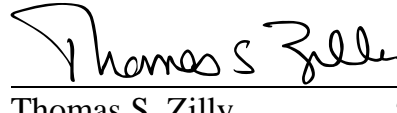
(2) The Court DENIES Defendants' Motion for Summary Judgment, docket no. 55, *without* prejudice.

(3) The Clerk is directed to appoint counsel from the Pro Bono Panel to represent Plaintiff, pursuant to 28 U.S.C. § 1915(e).

(4) The Court believes that further factual development of the record is necessary before the Court will be willing to entertain a second motion for summary judgment brought by Defendants. Specifically, Plaintiff, through appointed counsel, should have an opportunity

1 to depose Defendants Autry and Russell. Once counsel is appointed, the Court directs the  
2 parties to submit a joint status report, proposing a discovery cutoff, a dispositive motions  
3 filing date, and a trial date.

4 DATED this 16th day of November, 2007.

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6 Thomas S. Zilly  
7 United States District Judge  
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